IN THE SUPREME COURT OF THE UNITED STATES.

First National Bank of Baltimore, Petitioner,

vs.

William H. Staake, Trustee of C. R. Baird & Company, Bankrupt, Respondent.

October Term, 1905.

No. 213.

Receivers of Virginia Iron, Coal & Coke Company, Petitioners,

vs.

William H. Staake, Trustee of C. R. Baird & Company, Bankrupt, Respondent.

October Term, 1905.

No. 214.

ON WRIT, OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

PAPER BOOK OF RESPONDENT.

STATEMENT OF FACTS.

From the agreed statements of facts it appears

That on December 7th, 1899, Chester R. Baird entered into an agreement of sale with the Roanoke Furnace Company, by virtue of which he agreed to convey to it a certain furnace property near Roanoke, Virginia, known as the West End Furnace property;

That during October, 1900, certain creditors of Chester R. Baird caused attachments to be issued against him and levied on the property of the said C. R. Baird in the City of Roanoke, Virginia, known as the West End Furnace property, the attachments amounting to something over $40,000.;

That at the time the attachments were levied, Baird and the Furnace Company were both insolvent;

That on November 5, 1900, Baird executed and delivered, for a then fair consideration, a deed for the furnace property to the Roanoke Furnace Company, which deed was recorded on November 7th, 1900;

That on December 24th, 1900, a petition in bankruptcy was filed against Baird in the District Court of the United States for the Eastern District of Pennsylvania, upon which he was subsequently adjudicated a bankrupt, and William H. Staake, the respondent, was duly elected trustee and qualified as such. On December 29th, 1900, a petition in bankruptcy was filed against the Roanoke Furnace Company, which was subsequently adjudicated a bankrupt. Ancillary jurisdiction of both estates was also assumed by the District Court of the United States for the Western District of Virginia.

It further appears from the record

That Baird's trustee filed a petition asking the District Court for the Western District of Virginia to adjudge the liens of the attaching creditors null and void in their hands, but that they should be preserved for the benefit of the estate;

That the District Court for the Western District of Virginia decreed that the rights of the attaching creditors should be preserved for the benefit of Baird's estate and subrogated his Trustee to their rights, authorizing him to enforce the attachment liens with like force and effect as the attaching creditors might have done had not bankruptcy proceedings intervened;

That an appeal was taken from the decree of the District Court for the Western District of Virginia to the Circuit Court of Appeals for the fourth circuit, which affirmed the order of the District Court, and from the decision of that Court the matter has been brought before this Court upon writs of *certiorari*.

QUESTION INVOLVED.

The question for the consideration of this Court is whether a creditor who levies an attachment on property of an insolvent debtor, within four months of the petition on which the debtor is adjudged a bankrupt, can retain the fruits of the attachment for himself alone or must permit the general creditors of the bankrupt to share therein.

ARGUMENT.

It is proposed in this argument to deal with the question above stated under two heads, and to show

1. That the attaching creditors obtained by their attachments preferential liens, whose dissolution would militate against the best interests of the estate, and, therefore, that the trustee should be subrogated to their rights thereunder, in accordance with the provisions of Section 67*c* of the Bankruptcy Act.

2. That the attachments of the petitioners were void under the provisions of Section 67*f* of the Bankruptcy Act, but should be preserved thereunder for the benefit of the estate.

1. The question of preference must be determined at the time and under the circumstances under which it is obtained. Prior to the recordation of the deed of conveyance by Baird to the Roanoke Furnace Company, on November 7, 1900, the premises which were the subject matter of the attachments were, under the laws of Virginia, open to attachment by all creditors of Baird. The attaching creditors enforced this general right by issuing their attachments against the property of Baird, at a time when he was admittedly insolvent and within four months of the filing against him of the petition upon which he was subsequently adjudged a bankrupt. The enforcement of said attachments for the benefit of the attaching creditors would have resulted in the payment in full of the claims of said creditors, out of the proceeds derivable from a sale of the attached premises, and, therefore, preferences were then obtained. It is submitted that no subsequent transfer by Baird to any person whatever, for any consideration, however fair, nor any other act by either Baird or the Roanoke Furnace Co., could validate the attachments and purge their preferential taint.

If a petition in bankruptcy against Baird had been filed on the day immediately succeeding the levying of the attachments, the preferences would have been stricken down by the plainly expressed words of the act. That the filing of a petition in bankruptcy is, in effect, an attachment levied in behalf of all the bankrupt's creditors, seems to be conceded in the Brief filed on behalf of the Receivers of the Virginia Iron, Coal & Coke Company, at the bottom of page 7. It necessarily follows that if a petition in bankruptcy had been filed immediately after the levying of the attachments and before the delivery and recording of the deed, the Trustee

could have successfully nullified the otherwise legal effect of the unrecorded contract of sale, and he would have done so not through the rights of the grantor, but by virtue of the rights of the general creditors vested in him by operation of the Bankruptcy Act. It must be evident, therefore, that the attaching creditors were not then in a class distinct from the general creditors nor possessed of any rights superior to those of the Trustee in bankruptcy, as is now contended by them.

It will be remembered that at the time the attachments were levied, Baird was, admittedly, insolvent. He might have filed a voluntary petition in bankruptcy for the benefit of all his creditors, as the result of which the whole of the West End Furnace property might have been administered as a part of his estate; for the Roanoke Furnace Company, while perhaps not in collusion with Baird to enable him to defraud his creditors, by its failure to record the contract of sale for almost an entire year, left in him, during that period, the record title of the furnace property and impliedly agreed that that property should be subject to the attack of any of his creditors who might levy attachments upon it.

Baird, however, did not file a voluntary petition in bankruptcy. On the contrary, while thus insolvent and after the levy of these attachments upon the real estate standing upon the record in his name, he executed and delivered a deed of conveyance for that property to the Roanoke Furnace Company, and the effect of that transfer, being for an admittedly then fair consideration and not subject to avoidance by Baird's trustee, was the more surely to prefer the attaching creditors and, if their contention be correct, to prefer them so safely that the Bankruptcy Court cannot now deprive them of said preferences but must admit that, by the giving and recording of the deed, at a time when Baird was insolvent and within four months of the filing of the petition against him, the matter was removed from its jurisdiction and beyond the reach of its grasp. But the deed of conveyance having been delivered on No-

vember 5, 1900, subsequent to the levy of the attachments, "for a *then* fair consideration" (Record, No. 213, p. 12, section 9), the consideration received by the insolvent Baird, for the property attached, whatever its amount, must have been diminished by the exact amount of the claims sought to be recovered by the attaching creditors, and thus, in legal effect, Baird's conveyance was the specific application by an insolvent debtor of a part of his property to pay in full the claims of a few creditors, in fraud of the Bankruptcy Act, and the enforcement of those attachments would work preferences in their favor over his other creditors.

As the facts in these cases have been agreed upon and, therefore, admit of no dispute, it should hardly be necessary here to do more than to call attention to the point that in both Briefs submitted by the petitioners there are assertions not warranted by those agreements. For example, in the Brief of the Receivers of the Virginia Iron, Coke and Coal Company, it is asserted that the attachments were against the property of Roanoke, whereas in the agreement it was stated that the attachments were against the estate of Baird (Record No. 214, p. 17, Sec. 8); in that of the Bank of Baltimore, it is claimed that the property of Baird was parted with at the time of the contract of sale, for a fair consideration and without diminution because of the attachment, whereas in the agreement it was stated that the deed of November 5th, 1900, was a valid conveyance for a *then* fair consideration (Record No. 213, p. 12, Sec. 9). If it were permissible to go outside of the agreed facts in this way, the Trustee might assert, as is the real fact, that the full consideration mentioned in the agreement of sale was not received by Baird, for Roanoke Furnace Company did not discharge the encumbrances then existing and assumed by it, while Baird had to pay on its behalf Eighty five thousand dollars ($85,000.) to Tod, the original owner of the property, on account of his reserved vendor's lien. This money was never repaid to Baird

but the property charged with the attachments and with Tod's lien, thus reduced to Forty thousand dollars ($40,000.), was conveyed by the deed of November 5th, 1900, for "a then fair consideration," as is said in one of the agreements, or for "the consideration therein named," as is stated in the other. The arguments based on the supposition that the amount of the attachments would be realized by these creditors out of Roanoke's estate, as a penalty for its failure to record the contract of sale, and not out of Baird's estate, are thus seen to have no weight in the light of the real facts or of those which have been agreed upon by the parties. There is nothing in those agreements, it is submitted, that conflicts with the actual facts or justifies the petitioners in asserting that the full consideration named in the agreement of sale was paid by Roanoke, either at the date of the agreement or on that of the deed. The fair inference from the language of the agreed statements of facts is that, on the date of the deed, a consideration, then fair in view of all the circumstances, was paid.

By section 67*c* of the Bankruptcy Act it is provided as follows:—

> "A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person, shall be dissolved by the adjudication of such person to be a bankrupt, if it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference * * * ; or if the dissolution of such lien would militate against the best interests of the estate of such person, the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee,

with like force and effect as such holder might have done had not bankruptcy proceedings intervened."

In the present cases it appears that liens were obtained and permitted by legal proceedings against a person within four months of the filing of the petition in bankruptcy against him, while the defendant was insolvent, and that their existence and enforcement will work preferences. It further appears that the dissolution of the liens would militate against the best interests of such insolvent's bankrupt estate and, therefore, it is submitted that his trustee, for the benefit of the estate, is entitled to be subrogated to the rights of the attaching creditors and to perfect and enforce the same in his name as trustee. The contention of the Trustee may be made more clear by the following simple illustration:—

If A, the insolvent owner of property, worth $10,000, having agreed to sell the same to C, learns that his creditor, B, has attached the property for a $5000 debt, and thereafter conveys the title to C, for $5000 in cash, within four months of the filing of a petition in bankruptcy upon which he is subsequently adjudicated a bankrupt, then B has received a preference if he is allowed to enforce his lien against the property in the hands of C, and the property of A, not that of C, has been used to make the payment to B, one-half of its value being diverted for that purpose from the payment of the claims of other creditors of A. In such a case, it is clear that the provisions of Section 67*c* would be applicable.

If the attaching creditors in the prosecution of their attachments had carried the matter to judgment and execution thereon, and a sale had been advertised to take place on December 26th, 1900, could not the petition in bankruptcy, which was filed on December 24th, have alleged those facts as constituting an act of bankruptcy? The petition would have recited that, at a time when Baird was insolvent, he had suffered or had permitted certain creditors to obtain preferences through legal proceedings, to wit, attachments, and that a sale was advertised to take place on December 26th and that Baird

had not, at least five days prior thereto, discharged said preferences. Could Baird have been heard to deny that the property upon which the attachments had been levied was not his property, although it was just because the record title to the property had remained in him that the creditors were able to levy their attachments upon it? If these facts would have constituted an act of bankruptcy on the part of Baird, then, clearly, the relief asked for by the Trustee in these cases was properly granted.

2. These cases have, however, been correctly decided under section 67*f* of the Bankruptcy Act by the District Court and the Circuit Court of Appeals.

It was admitted in the agreed statements of facts that the attachments were liens obtained through legal proceedings against a person who was insolvent and within four months prior to the filing of the petition in bankruptcy against him, upon which he was subsequently adjudged a bankrupt. These admissions seem to bring the case, squarely within the language of section 67*f* and to justify the order of the District Court, affirmed by the Circuit Court of Appeals. That section reads as follows:—

> "That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be pre-

served by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect; *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a *bona fide* purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry."

It is argued by the petitioners that section 67*f*, covers only liens the enforcement of which would result in preferences, and that, as the mere annulment of these liens would not bring any property into the estate, there can be here no preference. It is believed that, under the first head of this argument, it has been demonstrated that these creditors would be preferred over the general creditors if they were permitted to enforce their attachments, but even if this were not so, it is submitted that section 67*f* is not limited, but applies to *all* liens obtained through legal proceedings.

The following comparison of subdivisions *c* and *f* of section 67 by Brandenburg (2nd ed.) p. 667, is clear and convincing proof that no question of preference is necessarily involved in subdivision *f*.

> "While statutes should, if possible, be construed so as to give every part effect, it is sometimes impossible to harmonize them, as appears to be the case here. It is quite clear that Congress either inadvertently left subdivision *c* in the bill after adding subdivision *f*, or intended to strengthen the Act by the broader and more drastic provisions of the latter clause. Subdivision *c* provides that liens of a certain character shall be void under certain conditions, while subdivision *f* provides that all the liens embraced by subdivision *c* shall be void without reference to any conditions save the insolvency of the debtor and their being obtained within four months. Subdivision *f* is the latest ex-

pression of the legislative will and in harmony with the general purpose of the Act to avoid preferences obtained after insolvency and an express inhibition against, and a declaration of the unlawful character of, liens which subdivision *c*, if it sustains, does so by implication only. Subdivision *f*, is therefore the law governing liens obtained within four months prior to the filing of a petition in bankruptcy through legal proceedings against an insolvent debtor."

It is contended that the trustee takes only the property named in section 70*a*, and therefore has no right to liens on property which, if discharged therefrom, would pass to others; but the argument overlooks the fact that section 70*a* is engaged in enumerating in general terms what passes to the trustee by operation of law, as of the date of the adjudication, as soon as he has qualified. This is not in opposition to the provision of 67*f* for an order of the court to preserve liens for the benefit of the estate and to clothe the trustee with the right to enforce them. That is a right coming to the trustee by a special order of the court and necessarily at a time subsequent to his appointment.

Further, the suggested construction of section 67*f* is not, it is submitted, the correct construction of that section as appears clearly when it is read as an entirety. The section deals with *all* liens obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, and after providing that the property shall pass to the trustee discharged of the lien, says that the court may order the right under the lien to be preserved for the benefit of the estate, "and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid." The words "the same" unquestionably refer to the lien which is thus preserved, and apparently, therefore, there is drawn in this section a distinction between an annulment of liens, which permits the property af-

fected thereby to pass to the trustee, and the preservation of liens, in which case the liens themselves and the right to enforce them pass to the trustee. In this latter case it makes no difference as to what would have been the result of the annulment of the lien; the ability of the property to pass to the trustee is, therefore, not any criterion as to the right of the court to preserve the lien for the benefit of the trustee. The more natural construction would appear to be that it is in just such cases as this, where the property would not pass, that the Act contemplates a preservation of the lien for the benefit of the estate.

The ability of the property to pass to the trustee is not made (certainly not expressly made) the test whether or not section 67*f* can be applied; such passage is, in ordinary cases, the consequence and result—the sequel—of defeating the liens, yet may be prevented by special circumstances, and there is nothing in the Act to warrant the assertion that the inability of the property thus to pass to the trustee saves the liens, nor are there, it is submitted, any cases so holding.

Examination of the cases cited by the petitioners will show that they involved entirely different facts from those in the present cases. Exempt property was expressly excepted from the operation of the Act, and, therefore, cases relating to such property can have no bearing here.

Further, it is suggested, on behalf of the trustee, that whatever effect the prior unrecorded contract or the subsequently recorded deed may have had in rendering impossible the passage to the trustee of the whole property so conveyed, that property was Baird's as to these attaching creditors, at least to the extent of their attachments, and so remained, and *their rights against it* were properly transferred to the trustee for the benefit of all Baird's creditors. Though the Furnace property, by virtue of the attachments and the conveyance, was Baird's *quoad* the attachments and no further, so that, thereafter, it could only be reached through the attach-

ments, for this very reason the case called for the exercise of the power which has been so wisely used by the District Court.

It is submitted that the Virginia law has been properly applied to these cases. It can be conceded that the Registry Laws of that State are meant to protect only *lien* creditors, as is contended by the petitioners, but the language of Judge Burks, in speaking for the Virginia Supreme Court, in the case of March, Price & Company *vs.* Chambers, *et als*, 30 Grattan, 299, where the rights of judgment creditors were under discussion, shows that, as to them, an unrecorded conveyance is void, *as well as all subsequent alienations*.

Judge Burks in that case, said:—

> "The written contract and the deed from Chambers to William T. Rainey being void as to the appellants, creditors of Chambers, all the subsequent alienations are in like manner void as to these creditors. The effect of the statute is that as to the appellants, Chambers must be regarded as entitled to the Danville lot at the date of their judgment against him, in like manner and to the same extent as if he had never aliened it."

Applying the above quoted language of Judge Burks to the present cases it appears that the West End Furnace property was a part of Baird's estate, as to the petitioners, when they attached it and, thereafter, so far as they were concerned, remained a part of his estate. They cannot, therefore, under the law of Virginia as expounded by its highest court, be heard now to allege that their liens were not obtained against the property of Baird or that that property passed to Roanoke; the subsequent deed, even though recorded, could not change the character of the property, as to them, so long as the liens remain undissolved. The fact that the recorded deed deprived Baird's general creditors of all opportunity to reach the property through the process afforded by the State courts, shows with what foresight

Congress acted when it gave to the Bankruptcy Court power to preserve and control liens for the benefit of a bankrupt's estate. The lower court did not create an asset out of a debt of Baird's, as the petitioners assert, nor did it take the property of Roanoke to pay Baird's creditors; but it laid its hold upon an asset of Baird's estate in the hands of the attaching creditors and by the only method available transferred it to Baird's trustee for general distribution.

Further, it may well be questioned whether, under section 70*a*, the asset of Baird's estate which was held by the attachments of these creditors did not pass to the trustee, or at any rate the right to receive it for the benefit of the general creditors, though an order of the court assigning the rights of the attaching creditors under their liens was necessary to enable the estate of Baird completely to reduce that asset to possession. Section 70*a* of the Act provides that the trustee shall be vested by operation of law with the title of the bankrupt to all "property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him." The property in question was so levied upon and the only question as to this point, therefore, is what is the meaning of the words "prior to the filing of the petition?" How long prior? In these cases the levies were made some two months prior. While it is true that for most purposes the Act refers to the date of the petition, the word "prior," here used, indicates that some interval is contemplated, and in dealing with the avoidance of preferential liens or transfers, the period is extended to four months prior to the date of the petition. As the above quoted subdivision of section 70*a* refers to transfers and levies, it seems reasonable to interpret the word "prior" as meaning "within four months prior." If this construction be correct, it then appears that the trustee was, by virtue of section 70*a*, vested with an asset of Baird's estate, consisting of so much of the West End Furnace property as would be required to satisfy the attachments,

and, as section 70*a* does not point out how this asset could be made available for the benefit of Baird's estate, the trustee was compelled to ask the District Court, under the power given it by section 67*f* of the Act, to order the transfer of the rights of the attaching creditors to him.

With all the ingenuity displayed in their arguments, counsel for the attaching creditors have been quite unable to show why the explicit provision of section 67*f* of the Act should not apply in these cases.

Indeed they have been unable to show any other state of facts for which this provision was so well fitted, it being manifest that only under such circumstances as exist in the present cases, is subrogation of the trustee to the rights of attaching creditors necessary. In all other cases the property would pass to the trustee upon the dissolution of the attachments.

Counsel for the attaching creditors have, therefore, argued to the Court that the provision of the Bankrupt Act as to all attachments or other liens obtained against a *person* who is insolvent, does not mean what it says, but refers only to attachments or to liens obtained against the *property* of a person who is insolvent.

In other words, they admit that in order to succeed, they must re-write the Bankrupt Act to suit their position in these cases. As has been seen, however, their attachments *were* levied against the property of an insolvent person.

They admit that the aim of the bankrupt laws is to deal, not only with the insolvent debtor and his estate, but also with his creditors, and it is this last item in their list of purposes that is before the Court in the present cases, for the only question for argument here is the question as to whether or not, under the provisions of the Bankrupt Act, a few creditors can absorb the property of the many.

Follow the argument of the petitioners to its logical conclusion:

Suppose, in place of a number of attaching creditors, but one creditor, and no property of the bankrupt in

existence, except the property attached, which has been validly conveyed to some third person, and suppose that the claim of the attaching creditor is large enough to absorb the whole property; then suppose that in place of months having elapsed between the various acts of the parties, as in the present cases, it was a matter of days. One creditor of the bankrupt, a few days before his failure, would then, by means of an attachment, obtain full payment, while the other creditors would get nothing. And yet the petitioners argue that the construction of the Bankrupt Act by the lower courts, for the purpose of preventing such a result, is "one that does violence to all our preconceived notions of the object of a bankrupt law."

The contention of the petitioners seems to be founded upon the assumption that there being no case exactly parallel with the present cases, the decisions of the lower courts should have been in their favor. But those decisions exactly cover the ground, and it is submitted that the arguments of the attaching creditors fail to meet or overthrow them in any particular.

Judge McDowell, of the District Court, in his opinion says:—

"While the state law gives to diligent creditors who attach, a priority of payment, a preference, over those who do not attach, it is beyond dispute that the intent of the bankrupt law (except as to rights gained more than four months before the filing of the petition in bankruptcy) is just the reverse. The intent of the latter, except as aforesaid, is to prorate all available assets and to prevent any priority of payment being obtained by any creditor within the four months, whether by consent of the debtor or by the diligence of the creditor. Such being the intent of the law, it seems to me that the argument based on the supposed injustice of the act as applied to the case at bar is not of weight. Such being the intent of the law, it would be surprising if Congress had omitted to provide for the (not) uncommon state of facts which we have here. And, as above remarked, the lan-

guage of 67*f* seems entirely adapted to the case we have here as well as to other possible cases. In cases where the title to the attached property remains in the bankrupts, the liens of attaching creditors are simply annulled and the proceeds of the property are divided *pro rata* among all the creditors. In cases where the bankrupt has made a fraudulent conveyance, this deed is by proper proceedings set aside, the attachments are annulled and the proceeds of the property are prorated among all the creditors. In cases where the bankrupt makes a valid conveyance, or where his fraudulent vendee makes a valid conveyance, the purpose of the law is worked out by preserving and enforcing the liens of the attaching creditors for the *pro rata* benefit of all the creditors."

This decision was sustained by the opinion of the Court of Appeals, which even more forcibly presses home the conclusions of the lower court.

They say:—

> "It cannot be disputed that the liens of the attachments in this case were obtained within four months by legal proceedings against a person who was insolvent, and that the court has on due notice ordered that the right under the attachments shall be preserved for the benefit of the estate and pass to and be preserved by the trustee for the benefit of the estate. There is, therefore, in the facts of this case a literal gratification of the words of this section. It is contended, however, that as the first clause of the section makes null and void the liens therein mentioned, and declares that the property affected by the lien shall be wholly discharged and released therefrom and pass to the trustee as part of the estate of the bankrupt, therefore the exception in the latter part of the clause of 67*f* can have reference only to liens on property, which, if the liens were annulled, would pass to the trustee of the bankrupt released from the lien.
>
> "We think this is narrowing the more obvious meaning of the words. The wording seems clearly

to contemplate that a creditor might obtain by reason of his being a creditor of the bankrupt a prohibited lien against property, which would not if unaffected pass to the trustee in bankruptcy, and it would appear that it was for that reason the clause in question was inserted, preserving the lien if the court should so order for the benefit of the estate and vesting it in the trustee.

"A primary object of the bankrupt law is to prevent preferences and compel equality among creditors of the bankrupt, and there can be no doubt that the sequestering of attachment liens, such as those in question in this case, for the benefit of the general creditors does produce equality and prevent preferences."

In conclusion, therefore, it is submitted that these cases were properly decided by the District Court and the Circuit Court of Appeals and that their judgments should be affirmed.

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